

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.301A, 455B.302, 455B.310, and 455D.3 and Iowa Code Supplement section 455B.306 as amended by 2008 Iowa Acts, Senate File 2276, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 101, "Solid Waste Comprehensive Planning Requirements," Iowa Administrative Code.

These amendments are being proposed to aid in clarification and ease of use of these rules and in order to correct inconsistencies between the Code of Iowa and the Iowa Administrative Code.

The proposed amendments were written by the Department largely due to suggested revisions received from stakeholders throughout the most recent cycle of solid waste comprehensive plan submittals.

The following is a summary of the proposed revisions and clarifications to Chapter 101.

- Subrule 101.1(2) (Applicability). This subrule is not necessary because the Iowa Code sections being implemented are cited at the end of the chapter. Therefore, the Department is proposing to rescind this subrule.

- 567—101.2(455B,455D) Definitions. The Department is proposing to rescind the definition of "contaminated soil." A definition for contaminated soil will be developed as part of the revision of 567—Chapter 108. Additionally, the definition of "planning cycle" is amended so that the planning cycle remains as set (three years) for the next round of plan updates but changes to five years for subsequent rounds (starting with the seventh round). The Department is also proposing to amend the definition of "solid waste" to include wastes that have been exempted from federal hazardous waste regulation except to the extent that any such exempted substances are liquid wastes or wastewater.

- 567—101.3(455B,455D) Waste management hierarchy. The Department is proposing to revise this rule to be consistent with Iowa Code section 455B.301A. This proposed amendment moves combustion with energy recovery above other approved techniques of solid waste management.

- 567—101.7(455B,455D) Base year adjustment method. The Department proposes to remove the provision which states that the Department will perform a goal progress calculation 12 months prior to the due date of the comprehensive plan update for each planning cycle for planning purposes. It is unclear how beneficial this provision has been for the planning areas, and implementation of the provision takes a great deal of staff time. When planning areas were asked to provide comments on the benefits gained by this provision, no comments were submitted.

- Paragraph 101.7(3)"c." The Department proposes to rescind this paragraph, which allows for the exclusion of contaminated soil from goal progress calculations. In many cases, contaminated soil can be remediated to state and federal standards, at which time it becomes dirt, which is specifically exempted from the statutory definition of "solid waste." If disposal of contaminated soil is the result of an exceptional event, a request for exemption from goal progress calculation may be made under the provisions of subrule 101.7(3). Therefore, separate provisions are unnecessary.

- 567—101.10(455B,455D) Municipal solid waste and recycling survey. The current rule allows for four options when completing the municipal solid waste and recycling survey outlined in subrules 101.10(1) through 101.10(4). The options outlined in subrules 101.10(1) and 101.10(4) state that the Department will enter the data into the online database. The proposed rescission of subrules 101.10(1) and 101.10(4) would remove the provision that the Department will enter the data. Completion of the previous round of comprehensive plans has fully populated the online database, resulting in the need

to review and update only the submitted information. It is the planning area's responsibility to ensure submitted data is accurate.

- 567—101.12(455B,455D) Solid waste comprehensive plan categories. The amendments to this rule are proposed to make the rule consistent with Iowa Code Supplement section 455B.306. Recent changes to Iowa Code Supplement section 455B.306 (2008 Iowa Acts, Senate File 2276) clarify language related to planning areas that choose to remain autonomous by closing all their landfills and using a transfer station to transfer waste to a facility in another planning area.

- 567—101.13(455B,455D) Types of comprehensive plan submittals to be filed. Recent changes to Iowa Code Supplement section 455B.306 (2008 Iowa Acts, Senate File 2276) remove the comprehensive planning requirement for nonmunicipal solid waste facilities. Therefore, the Department is proposing to remove language which delineates comprehensive planning requirements for nonmunicipal solid waste facilities.

- Subrule 101.13(2). The Department is proposing to revise the catchwords for this subrule to read as follows: "Comprehensive plan updates for municipal solid waste sanitary disposal projects."

- Subrule 101.13(3). Because the provisions of this subrule are inconsistent with the Code of Iowa, the Department is proposing to rescind this subrule.

Iowa Code Supplement section 455B.306(1) specifies that a city, county, or private agency operating or planning to operate a municipal solid waste sanitary disposal project shall file a comprehensive plan. Solid waste transfer stations are sanitary disposal projects, as determined by the Iowa Supreme Court in the case of ABC Disposal Systems, Inc. v. Department of Natural Resources, 681 N.W.2d 596 (Iowa 2004). Iowa Code Supplement section 455B.306(7)"e" also states that a comprehensive plan must include a description of the geographic area to be served by the city, county, or private agency. Except in limited circumstances defined in statute, the comprehensive plan shall not include a planning area or service area, any part of which is included in another comprehensive plan. The impact of this requirement is that a city or county must choose one planning area for the disposal of the solid waste generated in the city or county and cannot be a part of more than one planning or service area. All waste generated within an entity's comprehensive planning area must be deposited at a facility within the comprehensive plan; however, this does not preclude waste from being deposited at out-of-state facilities.

Subrule 101.13(3) allows transfer stations that take solid waste generated within Iowa and transport all the solid waste out of state for disposal to meet comprehensive planning requirements by filing an operational plan with the Department. Under current administrative rules, the Department requires any transfer station that uses an Iowa landfill to join the comprehensive plan established by the communities using that landfill and to only deliver waste collected within those communities. For transfer stations that haul all of their waste out of state, the Department has attempted to strike an appropriate balance between the goals of comprehensive solid waste planning and any burden those goals may be perceived to place on interstate commerce. The Department was requested by stakeholders to reevaluate its position in regard to transfer stations that deposit out of state all solid waste collected and to enforce the same requirements for transfer stations that deposit all solid waste out of state as those for transfer stations that deposit solid waste at in-state facilities. The Department has determined that this attempt to interpret Iowa Code Supplement section 455B.306(7)"e" so as to minimize potential impacts upon the interstate transportation of waste is not authorized by law.

Because the Department has concluded that subrule 101.13(3) is inconsistent with Iowa Code Supplement section 455B.306, the Department is proposing the rescission of this subrule. This would result in all transfer stations, regardless of final solid waste deposit location, falling under the same solid waste comprehensive planning requirements and would bring the Iowa Administrative Code into compliance with the Code of Iowa in respect to this matter.

- Subrules 101.13(4) through 101.13(6). Recent changes in Iowa Code Supplement section 455B.306 (2008 Iowa Acts, Senate File 2276) remove the comprehensive planning requirement for nonmunicipal solid waste facilities. Therefore, the Department is proposing to rescind these subrules.

- Subrule 101.14(2). The Department is proposing to revise paragraph 101.14(2)"a" to be consistent with Iowa Code section 455B.310(5). This revision is being proposed for purposes of clarification and in

order to correct inconsistencies between the Code of Iowa and the Iowa Administrative Code pertaining to the exemption from tonnage fees for solid waste facilities disposing of construction and demolition (C&D) wastes. The Department is proposing to incorporate Iowa Code section 455B.310(5) verbatim so that the exemption from the tonnage fee is for sites dedicated wholly to the disposal of C&D wastes. Currently, there are four sanitary landfills that meet this exemption.

Iowa Code section 455B.310 specifies that the operator of a sanitary landfill shall pay a tonnage fee to the Department for each ton of solid waste received and disposed of at a sanitary landfill. Tonnage fees remitted to the Department are placed in the Groundwater Protection Fund for Department operations and support of statewide solid waste programs such as Solid Waste Alternatives Financial Assistance, Solid Waste Facility Permitting, Comprehensive Planning, Special Waste Authorization, Iowa Waste Reduction Center, Iowa Waste Exchange and Household Hazardous Waste Regional Collection Centers. A portion of the tonnage fee is also retained locally for waste management plan development and implementation and environmental protection activities. The base tonnage fee is \$4.25; however, based on a planning area's progress toward state-mandated goals, each landfill pays slightly more or slightly less than the base amount. On average, \$2.78 per ton is remitted to the Department and \$1.47 per ton is retained locally.

Iowa Code section 455B.310(5) states in part, "Solid waste disposal facilities with special provisions which limit the site to disposal of construction and demolition waste . . . are exempt from the tonnage fees imposed under this section." Furthermore, paragraph 101.14(2)"a" states in part, "The fees specified in subrule 101.14(3) do not apply to construction and demolition waste disposed of in an area of a sanitary landfill that has been designated exclusively for the disposal of construction and demolition waste based on plans and specifications approved by the department."

Iowa Code section 455B.310(5) provides an exemption from the tonnage fee for sites limited to the disposal of C&D wastes only. Paragraph 101.14(2)"a" misinterprets the meaning of the term "site" as it is referred to in Iowa Code section 455B.310(5) and erroneously extends the tonnage fee exemption of Iowa Code section 455B.310(5) to individual disposal areas at municipal solid waste (MSW) landfills known as "MSWLF units." The following examples are given to support the correct use of the term "site" as it pertains to sanitary landfills:

Iowa Code section 455B.304(5) uses "site" to refer to the entire landfill.

The siting provisions of Iowa Code section 455B.305A use "site" to refer to the entire location.

Iowa Code section 455B.307(2) uses "site" in a way that refers to the entire property in that it refers to the hydrologic and geologic conditions of the disposal site and to disposal at a site for which an application has been made.

Iowa Code section 455D.9A prohibits baling of solid waste except waste that is baled on site. The reference to "site" logically refers to the entire site.

Iowa Code section 455B.305(6) uses "cell" to refer to an individual landfill cell.

These statutory uses of the term "site" are consistent with the definition of "site" previously adopted by the Department at 567—100.2(455B,455D). Rule 567—100.2(455B,455D) defines "site" as "any location, place or tract of land used for collection, storage, conversion, utilization, incineration or landfilling of solid waste, to include the landfill area, nonfill work areas, borrow areas plus a 100-foot-wide perimeter surrounding the working areas or the property line if it is closer than 100 feet to the working areas." This administrative rule definition, while consistent with the use of the term "site" in the Iowa Code sections referenced above, is not consistent with current subrule 101.14(2).

• Implementation sentence at chapter's end. The Department is proposing to update this sentence to include all applicable Iowa Code sections, including Iowa Code Supplement section 455B.306 as amended by 2008 Iowa Acts, Senate File 2276.

Any interested person may make written suggestions or comments pertaining to the proposed amendments until 4:30 p.m. on November 25, 2008. Such written materials should be directed to Chad Stobbe, Land Quality Bureau, Iowa Department of Natural Resources, 502 East Ninth Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8646; or E-mail chad.stobbe@dnr.iowa.gov. Persons wishing to convey their views orally should contact Chad Stobbe at (515)242-5851.

When submitting comments, stakeholders are encouraged by the Department to utilize the following guidelines. These guidelines aid the Department in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business, organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language to improve the specific rule(s) and explain why.

A public hearing will be held on November 25, 2008, from 1 to 3 p.m. in the Fifth Floor East Conference Room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of specific needs.

These amendments are intended to implement Iowa Code sections 455B.301A, 455B.302, 455B.310, and 455D.3 and Iowa Code Supplement section 455B.306 as amended by 2008 Iowa Acts, Senate File 2276.

The following amendments are proposed.

ITEM 1. Amend rule 567—101.1(455B,455D) as follows:

567—101.1(455B,455D) Purpose and applicability.

~~101.1(1) Purpose.~~ The purpose of these rules is to provide general definitions and direction for comprehensive integrated solid waste management planning for every city and county of this state and to provide an orderly and efficient process for the assessment and collection of fees for the disposal of solid waste at a sanitary landfill.

~~101.1(2) Applicability.~~ This chapter is intended to implement Iowa Code sections 455B.306, subsection 1 through subsection 5, and subsection 6, paragraph “e,” 455B.301A and 455D.3.

~~101.1(3) Authority.~~ Rescinded IAB 6/8/05, effective 7/13/05.

ITEM 2. Rescind the definition of “Contaminated soil” in rule **567—101.2(455B,455D)**.

ITEM 3. Amend rule **567—101.2(455B,455D)**, definitions of “Planning cycle” and “Solid waste,” as follows:

“*Planning cycle*” means the length of time between the due date for each comprehensive plan update submittal as approved by the department, which ~~is the same frequency as sanitary disposal project permitting~~ shall be five years effective March 1, 2011.

“*Solid waste*” ~~means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials including, but not limited to, such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles as defined by Iowa Code section 321.1, subsection 90. However, division IV of Iowa Code chapter 455B does not prohibit the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal project. Solid waste does not include hazardous waste as defined in Iowa Code section 455B.411 or source, special nuclear, or by product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979, or petroleum contaminated soil which has been remediated to acceptable state or federal standards~~ has the same meaning as found in Iowa Code section 455B.301. Pursuant to Iowa Code section 455B.301 as amended by 2009 Iowa Acts, Senate File 2276, section 1, the department has determined that solid waste includes those wastes exempted from federal hazardous

waste regulation pursuant to 40 CFR 261.4(b), as amended through [insert effective date of this amendment], except to the extent that any such exempted substances are liquid wastes or wastewater.

ITEM 4. Amend rule 567—101.3(455B,455D) as follows:

567—101.3(455B,455D) Waste management hierarchy. The state’s waste management hierarchy is listed in descending order of preference:

1. Volume reduction at the source;
2. Recycling and reuse, including composting;
3. Combustion with energy recovery;
- ~~3-4.~~ 4. Other approved techniques of solid waste management including, but not limited to, ~~combustion with energy recovery,~~ combustion for waste disposal, and disposal in sanitary landfills.

ITEM 5. Amend rule 567—101.7(455B,455D), introductory paragraph, as follows:

567—101.7(455B,455D) Base year adjustment method. ~~Using the base year adjustment method, the department will perform a goal progress calculation 12 months prior to the due date of the comprehensive plan update for each planning cycle. This goal progress calculation provided 12 months prior to the due date of the comprehensive plan update is for planning purposes only and is to be used to evaluate progress toward the state’s waste volume reduction and recycling goals.~~ Planning agencies may request that the department complete a goal progress recalculation once per fiscal year to resolve any discrepancies and to further evaluate progress toward the state’s waste volume reduction and recycling goals. At the time of approval of a comprehensive plan or comprehensive plan update, the department will use the most current complete fiscal year data set available to complete goal progress calculations, which will be used to meet the requirements outlined in subrule 101.13(8) and rule 567—101.14(455B,455D).

ITEM 6. Rescind paragraph **101.7(3)“c.”**

ITEM 7. Rescind subrules **101.10(1)** and **101.10(4)**.

ITEM 8. Renumber subrules **101.10(2)** and **101.10(3)** as **101.10(1)** and **101.10(2)**.

ITEM 9. Amend rule 567—101.12(455B,455D) as follows:

567—101.12(455B,455D) Solid waste comprehensive plan categories types. ~~Public or private entities~~ A city, county, or private agency operating or planning to operate a municipal solid waste sanitary disposal project ~~in Iowa, in conjunction with all local governments using the sanitary disposal project,~~ shall file with the director one of two categories types of comprehensive plans detailing the method by which the ~~public or private entity, in conjunction with all local governments using the sanitary disposal project,~~ city, county, or private agency will comply with solid waste comprehensive planning requirements. The first category type is a comprehensive plan in which ~~municipal~~ solid waste is disposed of in a sanitary landfill within the planning area. The second category type is a comprehensive plan in which all municipal solid waste is consolidated at 2 and transported from 2 a permitted transfer station for disposal at a sanitary landfill in another comprehensive planning area or state.

101.12(1) A planning area that closes all of the municipal solid waste sanitary landfills located in the planning area and chooses instead to use a municipal solid waste sanitary landfill in another planning area ~~that may choose to retain its autonomy as long as the sanitary landfill in the other planning area complies with all the requirements under Subtitle D of the federal Resource Conservation and Recovery Act, with of this chapter, and all solid waste generated within the planning area being closing its landfills is consolidated at 2 and transported from 2 a permitted transfer station, may elect to retain autonomy as a planning area and.~~ For purposes of this subrule, a planning area closing its own landfills that chooses to retain its autonomy shall not be required to join the planning area ~~where the~~ that contains the landfill ~~being used it is using for final disposal of its solid waste is located.~~

101.12(2) If a planning area ~~makes the election~~ chooses to retain autonomy ~~under subrule 101.12(1) pursuant to this rule,~~ the planning area receiving ~~the~~ solid waste from the planning area ~~making the election~~ sending it shall not be required to include the ~~planning area making the election in a~~ sending

planning area in its comprehensive plan provided that no services other than the acceptance of solid waste for disposal are shared between the two planning areas other than the acceptance of solid waste for sanitary landfill disposal. The A planning area receiving the solid waste shall only be responsible for the permitting, planning, and waste reduction and diversion programs in the planning area receiving the solid waste within that planning area.

101.12(3) If the department determines that solid waste cannot reasonably be consolidated and transported from a particular transfer station (e.g., asbestos or bulky construction and demolition waste), the department may establish permit conditions to address the transport and disposal of the solid waste. ~~An election may be made under this subrule~~ A planning area sending solid waste for disposal in another planning area may retain autonomy pursuant to subrule 101.12(1) only if the two both comprehensive planning areas enter into an agreement, pursuant to Iowa Code chapter 28E, that includes, at a minimum, all both of the following:

a. and b. No change.

ITEM 10. Amend rule ~~567—101.13(455B,455D)~~, second unnumbered paragraph, as follows:

If it is demonstrated to the department that any of the provisions outlined in paragraphs “1” through “3” below will not impact the planning area significantly, then the department may consider accepting a comprehensive plan amendment. This chapter also provides the comprehensive planning requirements that apply to ~~composting, recycling, solid waste processing, monowaste, monogenerator, and transfer station, and medical waste incineration~~ facilities. If during the planning cycle a change occurs to an existing planning area, the submission of an initial comprehensive plan may be required. An initial comprehensive plan is needed if:

ITEM 11. Amend subrule 101.13(2), catchwords, as follows:

101.13(2) *Comprehensive plan updates: for ~~permitted municipal solid waste landfills, construction and demolition waste disposal sites, and transfer stations~~ sanitary disposal projects.*

ITEM 12. Rescind and reserve subrules **101.13(3)** to **101.13(6)**.

ITEM 13. Amend paragraph **101.14(2)“a”** as follows:

a. ~~The fees specified in subrule 101.14(3) do not apply to construction and demolition waste disposed of in an area of a sanitary landfill that has been designated exclusively for the disposal of construction and demolition waste based on plans and specifications approved by the department; or to solid waste disposal facilities with special permit provisions which limit the site to the management of landscape waste and to disposal of coal combustion waste, cement kiln dust, construction and demolition waste and foundry sand; or to solid waste materials approved by the department for lining or capping or constructing berms, dikes or roads in the project.~~ Solid waste disposal facilities with special provisions which limit the site to disposal of construction and demolition waste, landscape waste, coal combustion waste, cement kiln dust, foundry sand, and solid waste materials approved by the department for lining or capping, or for construction berms, dikes, or roads in a sanitary disposal project or sanitary landfill are exempt from the tonnage fees imposed under this rule.

ITEM 14. Amend ~~567—Chapter 101~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~455B.304, 455B.306, and 455D.7~~ 455B.301A, 455B.302, and 455D.3 and Iowa Code Supplement section 455B.306 as amended by 2008 Iowa Acts, Senate File 2276.